

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

APR 26 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of the Subscriber Carrier)
Selection Changes Provisions of the)
Telecommunications Act of 1996)

Policies and Rules Concerning)
Unauthorized Changes of Consumers)
by Long Distance Carriers)

CC Docket No. 94-129

REPLY OF THE RURAL LECs

The Rural LECs¹ hereby submit their Reply to the Comments filed in response to the Interexchange Carrier (IXC) Joint Petition for Waiver and Motion for extension of the effective date of the Federal Communications Commission's ("FCC" or "Commission") slamming liability rules.² The Joint Petition proposed a "Third Party Administrator" ("TPA") alternative to the FCC's rules for investigating complaints of unauthorized carrier changes or "slamming" and for directing reimbursement if slamming was found to have occurred.

The Rural LECs filed comments on the Joint Petition in which they agreed, in principle, with a neutral third party administrator, assuming it provided a "more efficient and customer-friendly" mechanism for resolving slamming complaints and served as "a clearing house for amounts owed between carriers."³ The Rural LECs also agreed that the Commission should extend the effective date of the liability provisions until a more workable process could be put

¹ The Rural LECs are a coalition of small, rural local exchange carriers (LECs), some of which also operate affiliated, small IXCs.

² Common Carrier Bureau Public Notice released April 8, 1999, DA 99-683.

³ Rural LECs at 1-2.

No. of Copies rec'd
List A B C D E

014

in place,⁴ provided that LECs be permitted to continue verification of carrier changes.

The majority of commenters agree with the Rural LECs' conclusion that the TPA alternative proposed by the Petitioners falls far short of an acceptable alternative. Therefore the Commission should not grant the requested waiver, at least in its present form.

I. PETITIONERS FAIL TO PROVIDE CRITICAL INFORMATION ABOUT THE TPA

There is support among parties filing comments for the concept of a central administrator for processing slamming complaints. However, most commenters expressed serious reservations about Petitioners' proposal. The most prevalent criticism is that Petitioners have not provided enough information on the operation of the proposed TPA to assess it.⁵

Cost Information

Specifically, the proposal does not provide information on the cost of the TPA system, including how it would be funded.⁶

The only reference to cost in the petition is the plan to charge slammers up to \$50 on a per-complaint basis....Petitioners give no clue as to the overall costs of the TPA proposal, how much of these costs would be recouped by the per-complaint charge, how much of an annual assessment would be assessed on participants, how this assessment would be levied, and whether the processing charge would be assessed in those cases in which the TPA concludes no slam has taken place, and if so, on whom.⁷

What is clear is that the TPA imposes additional costs on carriers, in particular executing

⁴ "[S]omething in the nature of a liability administration process different from the Commission's proposal is clearly necessary." U S WEST at 6. See also GTE at 2, Bell Atlantic at 4.

⁵ GTE at 2 and 9, Cincinnati Bell at 2, SBC at 2, USTA at 5, Ameritech at 2, 5.

⁶ GTE at 3-4, Cincinnati Bell at 2, NARUC at 4, SBC at 9, U S WEST at 2, USTA at 4-5, Ameritech at 2.

⁷ Ameritech at 2, n. 3.

carriers, without providing them with a means of recovering those costs.

"Executing carriers would have to make mandated system enhancements, train customer representatives, and implement work solutions to support customer transfers to the TPA" among other things.⁸ ILEC executing carriers' obligations would be substantially increased under the proposed TPA because they would be required to: change back customers per the TPA's instructions, "hot transfer" complaints to the TPA, implement instructions to stop collections, and ensure that carrier changes are correctly credited to users and billed to slammers.⁹ There is also no cost justification for charging a \$50 per-complaint fee.¹⁰

Aside from imposing additional costs on executing carriers, the TPA proposal imposes a burden on these carriers in that they must demonstrate that they are not the cause of an unauthorized carrier change.¹¹

Operational Information

The TPA proposal also fails to address important operational issues.¹² For example, there is little information on the mechanisms that LECs would have to develop in connection with the TPA's operation.¹³ And those mechanisms are numerous.¹⁴

⁸ GTE at 5.

⁹ USTA at 4. See also Ameritech at 3.

¹⁰ SBC at 9-10.

¹¹ Ameritech at 4, n.7, SBC at 5.

¹² USTA at 5, GTE at 5, Cincinnati Bell at 2, Ameritech at 2.

¹³ USTA at 5.

¹⁴ Ameritech at 5.

Mandatory Participation

Carriers that do not voluntarily participate in the TPA are nonetheless subject to its processes by virtue of being a party to a slamming complaint (whether as the alleged slammer, the authorized carrier or the executing carrier). Therefore, the proposal is not "voluntary" as Petitioners claim.¹⁵

Favors IXC's

Another common complaint about the organizational structure of the TPA is that it favors IXC's over LEC's.¹⁶ As numerous parties point out, IXC's and their organizations constitute a majority of the Board of Directors that controls the "neutral" TPA. This, they fear, will result in bias in favor of IXC's and against LEC's in all aspects of the TPA's operation.¹⁷

The TPA Proposal Will Not Stop Customers from complaining to LEC's About Slamming. Nor Deter Slamming

Petitioners claim that the TPA will reduce the burden on LEC's because it will provide a central administrator to receive slamming complaints, instead of the LEC. However, as Rural LEC's and other parties have noted, this is not likely to occur.¹⁸ LEC customers, particularly those in small, rural communities, will continue to contact their LEC when a slamming question arises. Therefore, under a TPA plan, these customers would be directed by their LEC to call

¹⁵ Ameritech at 3.

¹⁶ Ameritech at 5-6, USTA at 5-6, Bell Atlantic at 5, GTE at 8, Cincinnati Bell at 2, U S WEST at 2.

¹⁷ Parties also note that there was little input from LEC's into the TPA proposal itself. See USTA at 3.

¹⁸ SBC at 7, U S WEST at 3, n.5.

the TPA to register their complaint. Subscribers will thus continue to hold LECs responsible, with the resulting continued expense and loss of good will. Instead of deterring slamming, the proposal will create a bureaucracy with a vested interest in a continued high level of slamming.

Unauthorized Quasi-Regulatory Body

Inasmuch as participation is in fact mandatory, the TPA would become a quasi-regulatory body. Yet, Petitioners cite no legal authority for grant of such broad authority, especially via waiver. The Commission should address its authority to designate a private industry body to: adjudicate slamming complaints, assess costs and fees, direct reimbursements or credits, etc.¹⁹ The TPA would be unlike other telecommunications industry associations such as the National Exchange Carrier Association, because it would have authority over non-members.

¹⁹ The maximum \$50 per complaint processing fee charged to "participating" carriers was opposed as invalid on the basis that the Commission would have no oversight over the fee and as an unreasonable amount for processing a slamming complaint. Western Iowa Telephone Association at 6.

II. THE RURAL LECs DO NOT OPPOSE STAY OF THE SLAMMING LIABILITY RULES PROVIDED THEY ARE PERMITTED TO VERIFY CARRIER CHANGES, AT LEAST IN THE INTERIM

If the Commission concludes it can resolve the issues set forth above in a reasonable period of time, then the Rural LECs do not object to postponing the effective date of the liability rules, with the essential caveat described below. However, because the reduction in slamming anticipated by the Commission will not occur, LECs and their subscribers will continue to be victims of slamming.

Therefore, if the FCC extends the effective date or stays its slamming liability rules, it should also extend the effective date of the verification rules and rescind its finding with respect to Section 222(b). Under the FCC slamming Order²⁰, executing carriers that verify carrier change requests are subject to penalties for violation of Section 222(b) of the Communications Act as amended, which restricts use of proprietary information obtained from another carrier.²¹ Therefore, if the Commission delays its liability rules, it should stay its verification rules, because LEC verification is the one proven way to prevent slamming. And if the verification rules are stayed, the Commission should simultaneously rescind its finding with respect to Section 222(b).

When a more fully developed, workable TPA is presented, the Commission should consider it in the context of a rulemaking, not a waiver. A rulemaking would afford the public adequate notice and opportunity for analysis and comment. Instead, the Commission is

²⁰ Second Report and Order and Further Notice Of Proposed Rulemaking, CC Docket No. 94-129, released Dec. 23, 1998.

²¹ The Commission has before it a Petition for Reconsideration filed by the National Telephone Cooperative Association refuting its analysis that executing carrier verification violates Section 222(b).

considering whether to delegate regulatory authority for overseeing thousands of complaints via the waiver process.²² Given the enormity of the slamming problem, the public should have considerably more than a week to digest an alternative slamming complaint and reimbursement process.

²² At the very least, the Commission should waive its ex parte rules in this matter to ensure greater participation by affected parties - consumers and carriers.

III. CONCLUSION

The commenters overwhelmingly conclude that the Commission does not have enough information on the workings of the proposed TPA to pass judgement on it. They recommend that the Commission seek input on a more detailed, neutral, less cumbersome and more consumer-friendly proposal than that put forth by Petitioners. Congress's objective in legislating against slamming and the FCC's objective in "beefing up" its anti-slamming rules was to deter slamming. If the FCC delays the slamming liability rules, it should also rescind its prohibition of executing carrier verification, which was extremely effective in deterring slamming.²³

Respectfully submitted,

The Rural LECS



David Cosson
Marci Greenstein
Their Attorneys

Kraskin, Lesse & Cosson, LLP
2120 L St. N.W.
Washington, D.C. 20037

April 26, 1999

²³ Rural LECs and the National Telephone Cooperative Association (NTCA) have filed Petitions for Reconsideration of the Commission's slamming rules seeking reversal of its prohibition against executing carrier verification.

CERTIFICATE OF SERVICE

I, Shelley Bryce, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing "Reply of the Rural LECs", was served this 26th day of April, 1999, by first class, U.S. Mail, postage prepaid to the following parties:


Shelley Bryce

William E. Kennard, Chairman *
Federal Communications Commission
445 12th Street, SW, 8th Floor
Washington, DC 20554

Susan Ness, Commissioner *
Federal Communications Commission
445 12th Street, SW, 8th Floor
Washington, DC 20554

Gloria Tristani, Commissioner *
Federal Communications Commission
445 12th Street, SW, 8th Floor
Washington, DC 20554

Harold Furchtgott-Roth, Commissioner *
Federal Communications Commission
445 12th Street, SW, 8th Floor
Washington, DC 20554

Michael K. Powell, Commissioner *
Federal Communications Commission
445 12th Street, SW, 8th Floor
Washington, DC 20554

Dorothy Attwood *
Chief, Enforcement Division
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Anita Cheng *
Enforcement Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Glenn Reynolds *
Enforcement Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Alexander P. Starr *
Chief, Formal Complaints and
Investigations Branch
Enforcement Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Judy Boley *
Performance Evaluation and Records
Management
Federal Communications Commission
445 12th Street, SW, Room A1836
Washington, DC 20554

Kathy Brown *
Federal Communications Commission
445 12th Street, SW, 8th Floor
Washington, DC 20554

International Transcription Service *
1231 20th Street, NW
Washington, DC 20036

* Via Hand Delivery

Kevin C. Gallagher
360 Communications Company
8725 W. Higgins Road
Chicago, IL 60631

Rogena Harris
Harisha Bastiampillai
Helein & Associates, P.C.
8180 Greensboro Drive, Suite 700
McLean, VA 22102
Counsel for ACTA

David A. Gross
AirTouch Communications
1818 N Street, Suite 800
Washington, DC 20036

Gary L. Phillips
1401 H Street, NW, #1020
Washington, DC 20005
Counsel for Ameritech

Mark C. Rosenblum
Peter H. Jacoby
AT&T Corp.
295 North Maple Avenue
Room 3250J1
Basking Ridge, NJ 07920

Stephen E. Bozzo
Michael E. Glover
James G. Pachulski
Bell Atlantic Telephone Companies
1320 North Court House Road
8th Floor
Arlington, VA 22201

John T. Scott, III
Crowell & Moring LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004
Counsel for Bell Atlantic Mobile, Inc.

Rachel J. Rothstein
Paul W. Kenefick
Brent M. Olson
Cable and Wireless USA, Inc.
8219 Leesburg Pike
Vienna, VA 22182

M. Robert Sutherland
Richard M. Sbaratta
Rebecca M. Lough
1155 Peachtree Street, NW, Suite 1700
Atlanta, GA 30309-3610
Counsel for BellSouth Corporation and
BellSouth Telecommunications, Inc.

Danny E. Adams
Rebekah J. Kinnett
Kelley Drye & Warren LLP
1200 19th Street, NW, Suite 500
Washington, DC 20036
Counsel for Billing Information Concepts
Corp.

Robert Taylor
Brittain Communications International Corp.
600 Jefferson, Suite 500
Houston, TX 77002

Peter Arth, Jr.
Lionel B. Wilson
Mary Mack Adu
Helen M. Mickiewicz
505 Van Ness Ave.
San Francisco, CA 94102
Counsel for the People of the State of
California and for the PUC of the State of
California

Jack B. Harrison
Frost & Jacobs, LLP
2500 PNC Center
201 East Fifth Street
Cincinnati, OH 45202
Counsel for Cincinnati Bell Telephone

Christopher J. Wilson
Thomas E. Taylor
Cincinnati Bell Telephone Company
201 East Fourth Street, 6th Floor
Cincinnati, OH 45202

John B. Adams
Citizens Utilities Company
1400 16th Street, NW, Suite 500
Washington, DC 20036

Carol Anne Bischoff
Robert M. McDowell
The Competitive Telecommunications
Association
1900 M Street, NW, Suite 800
Washington, DC 20036

Robert J. Aamoth
John J. Heitmann
Kelley Drye & Warren LLP
1200 19th Street, NW, Suite 500
Washington, DC 20036
Counsel for CTA

Ian D. Volner
Heather L. McDowell
Venable, Baetjer, Howard & Civiletti, LLP
1201 New York Avenue, NW, Suite 1000
Washington, DC 20005
Counsel for The Direct Marketing Assoc.

J. Christopher Dance
Robbin Johnson
Excel Communications, Inc.
8750 North Central Expressway
Dallas, TX 75231

Dana Frix
C. Joel Van Over
Swidler & Berlin, Chartered
3000 K Street, NW, Suite 300
Washington, DC 20007
Counsel for Excel Communications, Inc.

Cynthia B. Miller
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Michael J. Shortley, III
Frontier Corporation
180 S. Clinton Avenue
Rochester, NY 14646

Gail L. Polivy
GTE Service Corporation
1850 M Street, NW, Suite 1200
Washington, DC 20036

Richard McKenna
GTE Telephone Operations
600 Hidden Ridge
Irving, TX 75038

Jeffrey S. Linder
Suzanne Yelen
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006
Counsel for GTE Service Corp.

Jonathan E. Canis
Andrea D. Pruitt
Kelley Drye & Warren LLP
1200 19th Street, NW, Suite 500
Washington, DC 20036
Counsel for Intermedia Communications,
Inc.

Gary L. Mann
IXC Long Distance, Inc.
98 San Jacinto Boulevard, Suite 700
Austin, TX 78701

Douglas W. Kinkoph
LCI International Telecom Corp.
8180 Greensboro Drive, #800
McLean, VA 22102

Bryan G. Moorhouse
Susan Stevens Miller
Maryland Public Service Commission
6 Saint Paul Street
Baltimore, MD 21202

Karen Finstad Hammel
Montana Public Service Commission
1701 Prospect Avenue
P.O. Box 202601
Helena, MT 59620-2601

Linda F. Golodner
Susan Grant
National Consumers League
1701 K Street, NW, Suite 1200
Washington, DC 20006

Timothy S. Carey
Ann Kutter
Kevin M. Bronner
Douglas W. Elfner
Stephen A. Berger
New York State Consumer Protection Board
Five Empire State Plaza
Albany, NY 12223-1556

Lawrence G. Malone
New York State Dept. of Public Service
Three Empire State Plaza
Albany, NY 12223-1350

Robert P. Gruber
Antoinette R. Wike
Vickie L. Moir
Public Staff-N.C. Utilities Commission
P.O. Box 29520
Raleigh, NC 27626-0520

Robert S. Tongren
Evelyn R. Robinson
Ohio Consumers' Counsel
77 South High Street, 15th Floor
Columbus, OH 43221-4568

Phillip F. McClelland
Irwin A. Popowsky
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

Joseph Kahl
RCN Telecom Services, Inc.
105 Carnegie Center
Princeton, NJ 08540

Jean L. Kiddoo
Dana Frix
Marcy Greene
Swidler & Berlin, Chartered
3000 K Street, Suite 300
Washington, DC 20007
Counsel for RCN Telecom Services, Inc.

Wendy S. Bluemling
The Southern New England Telephone Co.
227 Church Street
New Haven, CT 06510

Robert M. Lynch
Durward D. Dupre
Mary W. Marks
Marjorie M. Weisman
Attorneys for Southwestern Bell Telephone
Company, Pacific Bell and Nevada Bell
One Bell Center, Room 3520
St. Louis, MO 63101

Nancy C. Woolf
Jeffrey B. Thomas
Attorneys for Southwestern Bell Telephone
Company, Pacific Bell and Nevada Bell
140 New Montgomery Street, Room 1529
San Francisco, CA 94105

Leon M. Kestenbaum
Jay C. Keithley
Michael B. Fingerhut
Sprint Corporation
1850 M Street, N.W., Suite 1100
Washington, DC 20036

Suzi Ray McClellan
Kristen Doyle
Texas Office of Public Utility Counsel
P.O. Box 12397
Austin, TX 78711-2397

Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
1620 I Street, N.W., Suite 701
Washington, DC 20006
Counsel for Telecomm. Resellers Assoc.

Pat Wood, III
Judy Walsh
Public Utility Commission of Texas
1701 N. Congress Avenue, 7th Floor
Austin, TX 78711

David R. Poe
Yvonne M. Coviello
LeBoeuf, Lamb, Greene & MacRae, LLP
1875 Connecticut Avenue, NW, Suite 1200
Washington, DC 20009
Counsel for Time Warner Communications Holdings, Inc

Paul B. Jones
Janis Stahlhut
Donald F. Shephard
Time Warner Communications Holdings Inc
290 Harbor Drive
Stamford, Connecticut 06902

Michael R. Gardner
William J. Gildea, III
Harvey Kellman
Law Offices of Michael R. Gardner, P.C.
1150 Connecticut Avenue, NW, Suite 710
Washington, DC 20036
Counsel for TPV Services, Inc.

Kathryn Marie Krause
Dan L. Poole
US West, Inc.
1020 19th Street, NW, Suite 700
Washington, DC 20036

Peter M. Bluhm
State of Vermont Public Service Board
112 State Street, Drawer 20
Montpelier, VT 05620-2701

Edward C. Addison
Virginia State Corp. Communications Staff
P.O. Box 1197
Richmond, VA 23218

Timothy R. Graham
Joseph M. Sandri, Jr.
Robert G. Berger
Russell C. Merbeth
Winstar Communications, Inc.
1146 19th Street, NW, Suite 200
Washington, DC 20036

John P. Finedore
Assistant Director
U.S. General Accounting Office
441 G Street, NW, Mail Stop 2723
Washington, DC 20548

Mary L. Brown
MCI WorldCom, Inc.
1801 Pennsylvania Avenue, NW
Washington, DC 20006

Genevieve Morelli
Senior Vice President of Government
Affairs and Senior Associate General
Counsel
4250 North Fairfax Drive
Arlington, VA 22203

James M. Smith
Vice President
Excel Telecommunications, Inc.
1133 Connecticut Avenue, NW, Suite 750
Washington, DC 20036

Lawrence E. Sarjeant
Mary McDermott
Linda Kent
Keith Townsend
Hance Haney
John Hunter
United States Telephone Association
1401 H Street, NW, Suite 600
Washington, DC 20005

William F. Maher, Jr.
Halprin, Temple, Goodman & Maher
555 12th Street, NW, Suite 950 North
Washington, DC 20004
Counsel for U.S. Telephone Association

Susan J. Bahr
Law Offices of Susan J. Bahr
P.O. Box 86089
Montgomery Village, MD 20886-6089
Counsel for Western Iowa Telephone
Association

Charles D. Gray
James Bradford Ramsay
National Association of Regulatory Utility
Commissioners
1100 Pennsylvania Avenue, Suite 608
P.O. Box 684
Washington, DC 20044

Robert M. Lynch
Roger K. Toppins
Barbara R. Hunt
SBC Communications Inc.
One Bell Plaza, Room 3026
Dallas, Texas 75202

Tanisha Lyon Brown
Assistant Attorney General
Public Utilities Section
180 E. Broad Street, 7th Floor
Columbus, OH 43215

Karen Kerrigan
President
Small Business Survival Committee
1320 18th Street, NW, Suite 200
Washington, DC 20036

Ronald Binz, President
Debra Berlyn, Executive Director
Competition Policy Institute
1156 15th Street, NW, Suite 520
Washington, DC 20005

Susan M. Eid
Richard A. Karre
1919 Pennsylvania Avenue, NW, Suite 610
Washington, DC 20006